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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Ashley Nettye, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	463 Seventh Avenue New York, NY 10018 UNITED STATES		

Attorney information	Jonathan Moskin, Jennifer Co White & Case LLP 1155 Avenue of the Americas New York, NY 10036 UNITED STATES jmoskin@whitecase.com, jco@whitecase.com, trademarkdocket@whitecase.com Phone:212-819-8200
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Registration Subject to Cancellation

Registration No	1582474	Registration date	02/13/1990
Registrant	KEY ITEM SALES, INC. 8911 INDEPENDENCE AVENUE CANOGA PARK, CA 91304 UNITED STATES		
Goods/Services Subject to Cancellation	Class 014. First Use: 1989/03/17 , First Use In Commerce: 1989/03/17 Goods/Services: JEWELRY, NAMELY, EARRINGS, NECKLACES, BRACELETS		

Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Petition.pdf (4 pages)(149629 bytes)
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Signature	/Jonathan Moskin/
Name	Jonathan Moskin, Jennifer Co
Date	07/06/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 1,582,474
Registered February 13, 1990
Mark: ASHLEY B.

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Ashley Nettye, Inc.,

Petitioner,

Cancellation No. _____

- against -

Key Item Sales, Inc.,

Respondent.
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PETITION FOR CANCELLATION

TO THE COMMISSION FOR TRADEMARKS:

Petitioner, Ashley Nettye, Inc., believes it is being, and will continue to be, damaged by the existence of Registration No. 1,582,474 for the Mark ASHLEY B. and hereby petitions for cancellation of the same pursuant to Section 14 of the Trademark Act of 1946, as amended (the "Lanham Act"), 15 U.S.C. § 1064.

As grounds for cancellation, Petitioner alleges that:

1. Petitioner Ashley Nettye, Inc. ("Ashley Nettye") is a corporation duly organized and existing under the laws of the State of Delaware, with its executive offices at 463 Seventh Avenue, New York, New York 10018.

2. Respondent Key Item Sales, Inc. ("Key Item Sales") is, upon information and belief, a corporation duly organized and existing under the laws of the State of California, with its principal place of business at 8911 Independence Avenue, Canoga Park, California 91304.

3. Petitioner is the owner of United States Trademark Application No. 76/608,435, filed August 24, 2004, for the mark "ASHLEY B" for "[c]lothing; namely swim wear, hats,

belts, ties, scarves, dresses, sweaters, suits, pants, jeans, vests, tops, shirts, shorts, blazers and skorts; outerwear, namely jackets, coats, vests, raincoats, and win-resistant jackets, whether made of or with down, polyfill, silk, leather, fur-lined, fur, cotton, and other fabric or material, or any combinations thereof" in International Class 25. This application is pending, and petitioner is the owner of the mark applied for therein.

4. Petitioner is the owner of United States Trademark Application No. 76/639,475, filed May 25, 2005, for the mark "ASHLEY B BERNARDO" & Design for "(Based on Use in Commerce) Clothing, namely, dresses, sweaters, suits, pants, jeans, vests, tops, shirts, shorts, blazers, and skorts; outerwear, namely, jackets and vests; (Based on Intent to Use) Clothing, namely, swim wear, hats, belts, ties, scarves; outerwear, namely, coats, raincoats, and wind-resistant jackets" in International Class 25. This application is pending, and petitioner is the owner of the mark applied for therein.

5. As a result of Petitioner's successful use of its ASHLEY B and ASHLEY B BERNARDO marks in connection with its long-established brand BERNARDO, in use since at least as early as April 1, 1988, consumers have come to recognize the name and Petitioner's ASHLEY B, ASHLEY B BERNARDO, and BERNARDO brands of clothing, which are sold in high-end stores and catalogs such as Nordstrom's, Macy's, Soft Surroundings, and BonTon and its affiliated stores, as identifying Petitioner as the sole source of the ASHLEY B and ASHLEY B BERNARDO clothing lines, and as distinguishing the same from the clothing lines of others, and said marks embody great and valuable goodwill exclusively belonging to Petitioner.

6. On or about February 13, 1990, Respondent obtained Registration No. 1,582,474 for the mark "ASHLEY B." in connection with "jewelry, namely, earrings, necklaces, bracelets" in International Class 14. Respondent renewed the registration on September 8, 2000.

7. The Respondent's ASHLEY B. mark has been cited against the Petitioner's applications for registration of ASHLEY B and ASHLEY B BERNARDO and the Petitioner has, accordingly, been unable to register its mark because of the Respondent's existing registration.

8. Upon information and belief, for many years and indeed for longer than three years, the Respondent has made no use in commerce of the registered mark ASHLEY B. on some or all of the goods specified in its Registration No. 1,582,474 for the mark, and the Respondent has accordingly abandoned the mark, in whole or in part.

9. Petitioner has been, and will continue to be, damaged by Registration No. 1,582,474, because such Registration will provide Respondent with at least prima facie evidence of its exclusive right to use the subject mark, even though Respondent has not used the subject mark on some or all of the goods cited in its registration. Such evidence will give color of exclusive statutory rights to Respondent in violation and derogation of the rights of Petitioner.

10. Upon information and belief, notwithstanding the Respondent's non-use and abandonment of the subject mark, in whole or in part, the Respondent has continued to maintain the registration, including most recently on September 8, 2000, for all of the goods specified in the original registration.

11. Registration No. 1,582,474 should be cancelled pursuant to Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3), on the grounds that Respondent has abandoned the subject mark.

12. Registration No. 1,582,474 should be cancelled pursuant to Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3), on the grounds that Respondent's maintenance of rights in the mark has been fraudulent.

WHEREFORE, Petitioner respectfully requests that this Petition for Cancellation be

sustained and that Registration No. 1,582,474 be cancelled in whole or in part.

All communication should be addressed to Petitioner's counsel, White & Case LLP, at the below stated address.

Dated: New York, New York
July 6, 2007

Respectfully submitted,

WHITE & CASE LLP

By: 

Jonathan B. Moskin

Jennifer L. Co

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New York, New York 10036-2787
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Attorneys for Petitioner,
Ashley Nettye, Inc.